MONTANA LEGISLATIVE HISTORY

Chapter 373 19 91

Bill HB 726 S _____ Original bill & history ✓ C

H. Committee on Labor & Emp			S. Committee on Labor & Emp		
Hearing Date(s) h 2/19		C	Hearing Date(s) h 3/19		C
		C	✓ 3/20		C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

RETURNED TO HOUSE
4/02 SIGNED BY SPEAKER
4/02 SIGNED BY PRESIDENT
4/02 TRANSMITTED TO GOVERNOR
4/06 SIGNED BY GOVERNOR
CHAPTER NUMBER 372 EFFECTIVE DATE: 10/01/91

HB 725 INTRODUCED BY SPRING, ET AL.
EXTEND PERMISSIBLE TERM OF CERTAIN CONSUMER LOANS

2/08	INTRODUCED		
2/08	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/09	FIRST READING		
2/15	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/21	PLACED ON ALTERNATIVE CONSENT CALENDAR		
2/23	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
2/25	FIRST READING		
2/25	REFERRED TO BUSINESS & INDUSTRY		
3/07	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/12	2ND READING CONCURRED	49	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/20	SIGNED BY SPEAKER		
3/20	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 150	EFFECTIVE DATE: 10/01/91	

HB 726 INTRODUCED BY BERGSAGEL, ET AL.
GENERALLY REVISE THE UNEMPLOYMENT INSURANCE LAWS
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

2/08	INTRODUCED		
2/08	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/09	FIRST READING		
2/09	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/19	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED AS AMENDED	98	1
2/26	3RD READING PASSED	99	0
	TRANSMITTED TO SENATE		
2/26	FIRST READING		
2/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/19	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/23	2ND READING CONCURRED	47	1
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/01	SIGNED BY SPEAKER		
4/01	SIGNED BY PRESIDENT		
4/01	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 373	EFFECTIVE DATE: 7/01/91	

HB 727 INTRODUCED BY WYATT, ET AL.
REDUCE THE AGE REQUIREMENT FOR ELIGIBILITY UNDER PERS

HOUSE BILL NO. 726

INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL,
O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE
BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE HOUSE

FEBRUARY 8, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 9, 1991	FIRST READING.
FEBRUARY 22, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 23, 1991	PRINTING REPORT.
FEBRUARY 25, 1991	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
FEBRUARY 26, 1991	THIRD READING, PASSED. AYES, 99; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 20, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 23, 1991	SECOND READING, CONCURRED IN.
MARCH 25, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 25, 1991	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 726

INTRODUCED BY Bergeson

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES"; TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY PAYMENT OF BENEFITS TO ALIENS; TO REVISE PAYMENT OF EXTENDED BENEFITS; TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR LEAVING WORK WITHOUT GOOD CAUSE; TO DISQUALIFY AN INDIVIDUAL FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK DUE TO MISCONDUCT; TO REPEAL DISQUALIFICATION FOR BENEFITS BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602, 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303, 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110, 39-51-2302, 39-51-2303, 39-51-2509, 39-51-2510, 39-51-2602, 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law

INTRODUCED BILL
HB 726

of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under ~~subsections (8) and (9) of 39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed

to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this

part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(17)~~(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

~~(18)~~(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability~~,--but-in-the-case-of payments--made--by-an-employer-directly-to-an-employee,-only those-payments-made~~ under a workers' compensation law ~~are excluded-from-"wages"~~;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

~~(19)~~(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(20)~~(21) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-202, MCA, is amended to read:

"**39-51-202. Employer defined.** "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20

different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

~~(2)~~(4) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

~~(3)~~(5) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

~~(4)~~(6) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such

act to be an employer under this chapter;

~~(5)~~(7) any employing unit which, having become an employer under subsection (1), ~~(2)~~-~~(3)~~ (4), (5), or ~~(4)~~ (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

~~(6)~~(8) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 3. Section 39-51-203, MCA, is amended to read:

"**39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such

service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless

and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the

United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

~~(8)--Agricultural--labor--exempted--under--39-51-204--is considered--employment--whenever--the--employing--unit--pays $20,000-or-more-in-cash-to-workers-for-agricultural-labor-in any--quarter--in--the--current-or-preceding-calendar-year-or employs-10-or-more-workers-in-agricultural-labor-on-20--days in--20--different--weeks--during--the--current--or-preceding calendar-year.-If-an-employer,-including-but-not-limited--to an-employing-unit-providing-outfitter-and-guide-services,-is otherwise--subject--to--this--chapter--and--has-agricultural employment,-all-employees-engaged-in-agricultural-labor-must be--excluded--from--coverage--under--this--chapter--if---the employer:~~

~~(a)--in--any--quarter--or--calendar-year,-as-applicable, does-not-meet-either-of-the-tests-relating-to--the--monetary amount--or--number--of--employees--and--days-worked,-for-the subject-wages-attributable-to-agricultural-labor,-and~~

~~(b)--keeps-separate-books-and-records-to-account-for-the employment-of-persons-in-agricultural-labor.~~

~~(9)--Domestic-service-exempted-under-39-51-204(1)(b)--is considered--employment--whenever--the--employing--unit--pays $1,000--or--more-in-cash-for-domestic-service-in-any-quarter during--the--current--or--preceding--calendar--year.--If--an employer-is--otherwise--subject--to--this--chapter--and--has~~

~~domestic---service--employment,--all--employees--engaged--in domestic-service-must-be-excluded-from-coverage--under--this chapter-if-the-employer:~~

~~(a)--does--not--meet--the--monetary--payment-test-in-any quarter-or-calendar-year,-as--applicable,--for--the--subject wages-attributable-to-domestic-service;-and~~

~~(b)--keeps-separate-books-and-records-to-account-for-the employment-of-persons-in-domestic-service.~~"

Section 4. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in ~~39-51-203(8),~~ 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor;

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in ~~39-51-203(9),~~ 39-51-202(3). If an

employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service;

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal

Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes

at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has

acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 5. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor -- who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be

treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person ~~within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9)~~ for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 6. Section 39-51-602, MCA, is amended to read:

"**39-51-602. Method to be used by department in keeping wage records.** Wage records kept by the department for the purposes of this chapter ~~shall~~ must be kept on the basis of wages paid~~.~~, except that for the purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, must be assigned to periods of time as determined in accordance with rules adopted by the department."

Section 7. Section 39-51-603, MCA, is amended to read:

"**39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and audit and shall be subject to being copied by the department or its authorized representative at any

reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both."

Section 8. Section 39-51-1101, MCA, is amended to read:

"**39-51-1101. Commencement and termination of coverage under chapter.** (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year

shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not equal or exceed ~~$1,000~~ the amount of wages required under 39-51-202 to be considered an employer subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in ~~subsection--(2) or--(3)--of~~ 39-51-202(4) or (5) shall be treated as a single employing unit."

Section 9. Section 39-51-1104, MCA, is amended to read:

"39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to ~~contributions~~ taxes, penalties, and interest owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money

on the contract to guarantee that all ~~contributions~~ taxes, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all ~~contributions~~ taxes, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor."

Section 10. Section 39-51-1105, MCA, is amended to read:

"39-51-1105. Liability of corporate officers for ~~contributions~~ taxes, penalties, and interest owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for

any ~~contributions~~ taxes, penalties, and interest due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the ~~contributions~~ taxes thereafter accruing."

Section 11. Section 39-51-1110, MCA, is amended to read:

"**39-51-1110. Refunds to employers.** (1) If not later than 3 years after the date on which any ~~contributions~~ taxes or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such ~~contributions~~ taxes or interest thereon shall make application for an adjustment thereof in connection with subsequent ~~contribution~~ tax payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such ~~contributions~~ taxes or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent ~~contribution~~ tax payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made

on the department's own initiative.

(2) If the department shall determine that an employer has paid ~~contributions~~ taxes to this state under this chapter when such ~~contributions~~ taxes should have been paid to another state under a similar act of such other state, transfer of such ~~contributions~~ taxes to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all ~~contributions~~ taxes required under this chapter from employers for that year."

Section 12. Section 39-51-1301, MCA is amended to read:

"**39-51-1301. (Effective July 1, 1991) Penalty and interest on past-due ~~contributions~~ taxes.** (1) ~~Contributions~~ Taxes unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the ~~contribution~~ tax due, whichever is greater. If the ~~contributions~~ taxes are not paid by the end of the month following the due date, the employer shall be subject to a

penalty assessment of $15 or 15% of the ~~contributions~~ taxes due, whichever is greater. All past-due ~~contributions~~ taxes shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay ~~contributions~~ taxes on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay ~~contributions~~ taxes on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due ~~contributions~~ taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 13. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid ~~contributions~~ taxes. (1) If any employer fails to file a

report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of ~~contributions~~ taxes due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and ~~contributions~~ taxes due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified ~~or registered~~ mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer.

At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final."

Section 14. Section 39-51-1303, MCA, is amended to read:

"**39-51-1303. Collection of unpaid ~~contributions~~ taxes by civil action.** (1) If, after due notice, any employer defaults in any payment of ~~contributions~~ taxes, penalties, or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of ~~contributions~~ taxes due must be brought within 5 years after the due date of such ~~contributions~~ taxes or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 15. Section 39-51-1304, MCA, is amended to

read:

"**39-51-1304. Lien for payment of unpaid ~~contributions and--assessments~~ taxes -- levy and execution.** (1) Unpaid ~~contributions--and--assessments--under--39-51-404(4)~~ taxes, including penalties and interest assessed thereon, have the effect of a judgment against the employer, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. ~~From--the--time--the--judgment--is filed-with-the-secretary-of-state-or-a-registrar-of-personal property--specifically--describing-the-personal-property,-it becomes-a-lien-upon-personal-property-of-the-employer.~~ After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the

entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all ~~contributions, assessments~~ taxes, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent ~~contributions, assessments~~ taxes, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 16. Section 39-51-1305, is amended to read:

"**39-51-1305. Priority of payment of ~~contributions~~ taxes due under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an

order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, ~~contributions~~ taxes then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding."

Section 17. Section 39-51-1306, MCA, is amended to read:

"**39-51-1306. Reciprocity with other states for collection of unpaid ~~contributions~~ taxes.** (1) The courts of this state shall recognize and enforce liabilities for unemployment ~~contributions~~ taxes and any other special assessments imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment ~~contributions~~ taxes, penalties, and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such ~~contributions~~ taxes and any other special assessments and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent ~~contributions~~ taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance ~~contributions~~ taxes and other special assessments, penalties, and interest shall be conclusive evidence of such authority."

Section 18. Section 39-51-2110, MCA, is amended to read:

"**39-51-2110. Payment of benefits to aliens.** (1) ~~Effective January 1, 1978, benefits~~ Benefits shall not be ~~paid~~ payable on the basis of services performed by an alien unless ~~such~~ the alien is an individual who ~~has been~~ was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or ~~otherwise is~~ was permanently residing in the United States under color of law, at the time the services were performed, including an alien who ~~is~~ was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals

applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence."

Section 19. Section 39-51-2509, MCA, is amended to read:

"**39-51-2509. Weekly extended benefit amount.** (1) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount, except as provided in subsection (2).

(2) For any week during a period in which federal payments to this state under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period must be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, must

be rounded to the nearest lower full dollar amount, payable to him during his applicable benefit year."

Section 20. Section 39-51-2510, MCA, is amended to read:

"**39-51-2510. Total extended benefit amount.** ~~The~~ (1) Except as provided in subsection (2), the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

~~(1)~~(a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

~~(2)~~(b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

(2) During any fiscal year in which federal payments to this state under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his applicable benefit year must be reduced by an amount equal to the aggregate of the reductions under 39-51-2509 in the weekly amounts paid to the individual."

Section 21. Section 39-51-2602, MCA, is amended to

read:

"**39-51-2602. Approved ~~trade-readjustment~~ training** under federal programs. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because ~~he is~~ of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974~~,~~ or under Title III of the federal Job Training Partnership Act;

(b) ~~in which he is~~ because of participation in ~~such~~ approved training described in subsection (1)(a) by reason of leaving work to enter ~~such~~ the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974 and the federal Job Training Partnership

Act."

Section 22. Section 39-51-1121, MCA, is amended to read:

"39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means ~~December 31~~ November 30 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

~~(4) "Department" means the department of labor and industry.~~

~~(5)~~(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

~~(a) filed all contribution reports prescribed by the department;~~

~~(b) paid all contributions and all assessments under 39-51-404(4) and penalties and interest thereon;~~

~~(c)~~(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

~~(d)~~(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

~~(6)~~(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

~~(7)~~(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

~~(9) "Unrated employer" means an employer who is subject~~

~~under this chapter and who does not meet all the criteria of an eligible or a deficit employer.~~"

Section 23. Section 39-51-1125, MCA, is amended to read:

"**39-51-1125. Computation of payments in lieu of contributions.** (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

Section 24. Section 39-51-1212, MCA, is amended to read:

"**39-51-1212. Experience rating for governmental entities.** (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed

transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the

percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages."

Section 25. Section 39-51-1213, MCA, is amended to read:

"**39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll

rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect

the rate determination for previous years.

(6) ~~Deficit--employers~~ An employer who ~~have~~ has not filed all required payroll reports or paid all ~~contributions~~ taxes, penalties, and interest due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year for his classification as an eligible, deficit, or new employer."

Section 26. Section 39-51-1214, MCA, is amended to read:

"**39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid shall be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators; or

(c) if the base period employer continues to provide employment with no reduction in hours or wages~~.~~; or

(d) if benefits are paid to claimants who are in training approved under 39-51-2307."

Section 27. Section 39-51-1217, MCA, is amended to read:

"**39-51-1217. Schedule of rates assigned based on trust fund reserve.** (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of ~~December--31~~ November 30 prior to the rate year to total wages in covered employment for the 12-month period ending June 30 prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible~~,--unrated,~~ and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as ~~unrated~~ a new employer must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference

between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may ~~an unrated~~ a new employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification."

Section 28. Section 39-51-1218, MCA, is amended to read:

"**39-51-1218. Rate schedules.**

SCHEDULES OF CONTRIBUTION RATES -- Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0

Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3

~~Contribution Rates For Unrated Employers~~

	~~2.0%~~	~~2.2%~~	~~2.4%~~	~~2.6%~~

Rate Class	Contribution Rates For Deficit Employers			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2
9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES -- Part II					
Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
2.2	2.4	2.6	2.8	3.0	3.2

Contribution Rates For Eligible Employers					
0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7
1.9	2.1	2.3	2.5	2.7	2.9
2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5

~~Contribution Rates For Unrated Employers~~					
~~2.8%~~	~~3.0%~~	~~3.2%~~	~~3.4%~~	~~3.6%~~	~~3.8%~~

Contribution Rates For Deficit Employers					
4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4"

Section 29. Section 39-51-3201, MCA, is amended to read:

"**39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- administrative penalty and remedy.** (1) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

~~(1)~~(a) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in

accordance with the severity of each case; and

~~(2)~~(b) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him plus ~~interest at the rate of 10% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due.~~ a penalty equivalent to 33% of the fraudulently obtained benefits, except that future benefits may not be used to offset the penalty due. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal

year."

Section 30. Section 39-51-3202, MCA, is amended to read:

"**39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- criminal penalty.** (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201~~(2)~~(1)(b).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received plus ~~10%--interest--a--year,~~ a penalty equivalent to 33% of the amount wrongfully received. ~~notwithstanding the provisions of 25-9-205.~~ All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the

extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 31. Section 39-51-2107, MCA, is amended to read:

"**39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year -- amount required.** An individual who received benefits during a benefit year must perform services for remuneration ~~after-the-beginning-of--that--year~~ following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. ~~The--service-may-be-in-either covered--or--noncovered---employment.~~ The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year."

Section 32. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. **Disqualification for leaving work without good cause.** (1) An individual shall be disqualified for

benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct ~~or-left-his-employment~~ upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment."

Section 33. Section 39-51-2303, MCA, is amended to read:

"**39-51-2303. Disqualification for discharge or suspension due to misconduct.** An individual shall be disqualified for benefits after being discharged or suspended:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred;

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks."

NEW SECTION. **Section 34. Repealer.** Section 39-51-2308, MCA, is repealed.

NEW SECTION. **Section 35. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 36. Effective date.** [This act] is effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0726, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise and clarify the unemployment insurance laws.

ASSUMPTIONS:

1. Two reimbursable or government employers each year would be relieved of benefit charges resulting in a minimal negative effect on the trust fund.
2. 100 employers would still be delinquent by the cutoff date in any one year. Some employers' rate would be less than the rate used now and some would be greater. Increases and decreases are assumed to be offsetting with no net effect on the expendable trust fund.
3. Testing the trust fund balance November 30 as compared to December 31, would reduce trust fund adequacy by $3.5 million. Taxable wages are estimated to be $3,156,350,000 in FY92. The higher balance on the November 30 calculation date would reduce the tax rate by 0.2% and therefore receipts by $4,300,000 in FY92.
4. HB0726 would provide an additional means by which the department can enforce collection of past due contributions. There is insufficient data to estimate the increase in the trust fund balance.
5. No more than 10 claimant disqualification cases would develop each year; 50% would be disqualified. Average weeks duration of claimants is estimated to be 14 weeks each year and the average weekly benefit amount to be $129 in FY92 and $131 in FY93.
6. The weekly benefit amount of claimants under the Extended Benefit program would be reduced in the event of a Gramm-Rudman-Hollings Act sequester. Under HB0726, the state portion of extended benefits be reduced to match the federal reduction. The E.B. program is not expected to be active during the biennium.
7. The 33% one time penalty is approximately equal to the accrued interest now charged for overpayments due to fraud. Interest is currently charged retroactively to the date the overpayment occurred. Because the age of such cases extend for at least 2 years, the penalty would approximate the retroactive and continuing interest charges under current law.

FISCAL IMPACT:

see next page

2-14-91

ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2/16/91

ERNEST BERGSAGEL, PRIMARY SPONSOR DATE

Fiscal Note for HB0726, as introduced

HB 726

FISCAL IMPACT:

	FY92			FY93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
UI Benefits	43,000,000	42,990,970	(9,030)	42,000,000	41,990,830	(9,170)
Funding:						
UI Trust Fund	43,000,000	42,990,970	(9,030)	42,000,000	41,990,830	(9,170)
Revenues:						
UI Trust Fund	43,525,000	39,225,000	(4,300,000)	45,325,000	45,325,000	0

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Section 39-51-1217, MCA, as proposed, would reduce the adequacy of the UI trust fund by $3.5 million.

CHAIRMAN--CAROLYN SQUIRES
NORMAL SCHEDULE==> SITE: ROOM 312-1 DAYS: M,W,F TIME: 3:00 P.M.

SECRETARY-JENNIFER THOMPSON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0628	2/05	2/14		DO PASS		2/15
WHALEN, TIM			DEFINE PUBLIC CONVENIENCE AND NECESSITY AND RAILROAD DUTY TO FURNISH DEPOT			
HB0643	2/06	2/19		PASS AS AMENDED		2/20
SQUIRES, CAROLYN			PROVIDE EMPLOYEE PROTECTION AGAINST AN INSTITUTION'S CLOSURE			
HB0663	2/07	2/14		PASS AS AMENDED		2/15
DOWELL, TIM			EXPAND APPLICATION OF PROVISIONS OF THE UNIFORM ARBITRATION ACT			
HB0669	2/07	3/22		TABLED ON 03/22		
COCCHIARELLA, VICKI			GENERAL FUND APPROPRIATION FOR THE MONTANA STATE HOSPITAL AT GALEN			
HB0712	2/08	2/21		PASS AS AMENDED		2/22
SQUIRES, CAROLYN			MANDATE EMPLOYER TO PURCHASE EMPLOYEE'S SAFETY EQUIPMENT EXCEPT FOOTWARE			
HB0726	2/08	2/19		PASS AS AMENDED		2/22
BERGSAGEL, ERNEST			GENERALLY REVISE THE UNEMPLOYMENT INSURANCE LAWS			
HB0729	2/09	2/21		DO PASS		2/22
RUSSELL, ANGELA			DELETE DISQUALIFICATION REQUIRING GOOD CAUSE ATTRIBUTABLE TO EMPLOYMENT			
HB0730	2/09	2/14		PASS AS AMENDED		2/15
BROWN, DAVE			REVISE PSC AUTHORITY RE RAILROAD SHIPPING AND PASSENGER FACILITIES			
HB0803	2/13	3/15		DO PASS		3/23
MENAHAN, RED			PROTECT EMPLOYEES AND COMMUNITIES FROM EFFECTS OF CLOSURES AND LAYOFFS			
HB0804	2/13	2/21		DO PASS	APPROPRIATIONS	2/22
MENAHAN, RED			PROVIDE BENEFITS FOR EMPLOYEES TERMINATED THROUGH A REDUCTION IN FORCE			
HB0807	2/13	2/19		PASS AS AMENDED		2/22
JOHNSON, ROYAL			MAKE UNEMPLOYMENT AND WORKERS' COMPENSATION EXCLUSION LISTS CONSISTENT			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES**, on February 19, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Members Excused:

Thomas Lee (R)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: **REP. WANZENRIED** said the Subcommittee on HB 837 will meet in Room 312-1 at 11:00 a.m. on February 20, 1991.

proposals are opened. **REP. MENAHAN** said the intent is to make the employees aware of what is being proposed. **REP. BENEDICT** asked if it circumvented the competitive procedure. **REP. MENAHAN** said after the bids are open, it doesn't. **REP. BENEDICT** said they aren't bids; they are proposals. A proposal is different than a bid. **REP. MENAHAN** said he didn't see that it would. The proposal would just be made for public inspection.

REP. O'KEEFE asked if the proposals are open for public inspection after they're accepted by the department that is contemplating privatizing state employees with a state agency contract, would there be any competitive negotiation advantage to the state to have two different proposals. Would it be an advantage for the state to ask the bidders if either one could do better than the other? **REP. MENAHAN** said yes.

REP. JOHNSON asked **REP. MENAHAN** if bidders would be detoured from being competitive on the first go around if the state says it will be negotiated once the bids are in. **REP. MENAHAN** said no. **REP. JOHNSON** said it would by the description that REP. O'KEEFE just gave. **REP. MENAHAN** said he didn't perceive that it could be said who could go with a lower amount or provide less service.

REP. DRISCOLL asked **REP. MENAHAN** if there were five requests for proposals open, and specifications were written from the best part of each one, wouldn't everyone be on equal footing because they could bid the specifications. **REP. MENAHAN** said yes.

Closing by Sponsor:

REP. MENAHAN closed the hearing on HB 846.

HEARING ON HB 726

Presentation and Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, House District 17, Malta, said HB 726 will combine the definitions of contributions and assessments under the single term "taxes." It places the exclusions for agricultural and domestic employment in the same section with other exclusions. It will provide clear authority to the Department of Labor to allocate certain payments, such as, severance or termination pay, to weeks other than the week they were paid. It will remove the requirement of filing a listing of personal property in order to perfect a lien with the Secretary of State since the Secretary of State has no ability or procedure for accepting such a filing. It changes the procedure and date for determining the overall tax rate, so employers may be notified sooner. It changes the penalty for obtaining benefits fraudulently from 18 percent per year computed from the same time fraud occurred to a flat 33 percent of benefits fraudulently obtained. This penalty would be imposed at the time of the decision. It allows the Department to disqualify an individual who has been suspended for misconduct.

Current law allows this action only for termination of misconduct.

Proponents' Testimony:

Chuck Hunter, Department of Labor and Industry, presented amendments. **EXHIBIT 15.** The first amendment corrects a drafting error. The second amendment changes the effective date of when taxes are computed which addresses the issue in the fiscal note. He presented written testimony. **EXHIBIT 16.** The bill changes the procedure for setting the rates for subsequent years. In the fiscal note, a clause states that this change would have an impact of about $4.3 million on the Trust Fund in reduced collections. That happens because if the cut-off date is moved, the fund balance in the Unemployment Insurance Trust Fund fluctuates over time. If the current date of December 31 is moved to November 30, traditionally there is a higher Trust Fund balance at November 30 than at December 31. A higher Trust Fund balance will usually result in a lower tax-rate schedule the following year. A higher rate of tax would not be collected. However, in the subsequent year since those taxes were not in the Fund, that would trigger potentially a different change in the schedule the following year. In effect, there is a potential reduction tax in collection in one year deferred to the subsequent year. The amendment changes the date from November 30 to October 31. According to analysis of the Trust Fund balance over the past seven years, the October 31 date is very close to the December 31 date. By using the October date, this bill would allow employers to receive their rate notices earlier but would not have the outcome that is stated in the fiscal note. The second part of the fiscal note deals with the bill allowing a different procedure for charging penalty on fraud overpayments. Currently, when benefits are obtained fraudulently there is an 18 percent per annum penalty that is imposed at the time of the decision. Typically two years after the fact, a court decision is relied on to get the information to establish that there was fraud. Two years of interest at 18 percent is 36 percent. If it is longer, the interest may be 42 percent. This provision would change it to a flat 33 percent. The Department's interest is not necessarily in the percentage, but in changing the procedure to a flat percent assessed at the time the decision is reached, and not to have an unclear amount that grows over time and is hard for claimants and employers to calculate.

Opponents' Testimony: None

Questions From Committee Members:

REP. WHALEN asked **Mr. Hunter** if he knew the penalty on an insurer who does not pay benefits within a timely period or refuses to pay benefits. **Mr. Hunter** said he didn't know the specific figures, but thought it was tied to the prime rate plus a percentage under a proposal already seen by the Committee.

REP. DRISCOLL asked **Mr. Hunter** why the bill contains the language on Pages 36-37, which says extended benefits can be reduced because of a Federal Deficit Control Act. In the past if there were extended payments, the difference was paid. **Mr. Hunter** said it is not a federal mandate; it allows the Department to not pick up that additional share. If there is a reduction under the Gramm-Rudman-Hollings Act and this legislation was not enacted, the state employers would pick up the additional share. Instead of being at fifty - fifty, if the Gramm-Rudman-Hollings Act sequestered 3 percent, the state would pay the additional percent. The federal share would be 47 percent and the state share would be 53 percent. **REP. DRISCOLL** said Page 40 states a new employer is someone who hasn't been subject to the payments for three fiscal years preceding the contribution date and has established a record. How can he not pay and establish a record. **Mr. Hunter** said the record can be established within one year. The Department would know if an employer has had more benefits charged than he has paid in taxes within one year. The previous definition said that three full years of experience were needed before a rate could be computed. Since the last Legislature, new employers have been assigned a rate based upon their industry average instead of a computed rate. **REP. DRISCOLL** asked if it affected the three-year average of deficit employers. **Mr. Hunter** said no. **REP. DRISCOLL** said on Page 42 the new language states a payment may not be required if hours or wages were not reduced. Unemployment can't be drawn if wages or hours are not lost. **Mr. Hunter** said there is a provision in the law where a claimant can draw partial benefits if he becomes unemployed, begins working part time, and is still looking for full-time employment. This provision applies to the employer who is providing that part-time employment. The language says that the employer can't be charged for benefits unless he reduces the part-time hours that he is providing to that person. **REP. DRISCOLL** said in the title it states to revise qualifications for benefits for leaving work without good cause. Is Section 33 the only part of the bill that addresses that? **Mr. Hunter** said yes.

CHAIR SQUIRES asked **Mr. Hunter** if it was still his intention to address the severance pay in the rulemaking process. Hearings will be held on the rulemaking process to establish an option as to whether the severance pay would be received in full and the 26 weeks of unemployment would be received immediately, or the severance pay could be spread out over the time period of a weekly wage and then receive the 26 weeks. **Mr. Hunter** said yes; in the rule making process, public hearings would be held for all affected parties. The Department's interest is to make sure claimants have knowledge of how the various provisions would affect their benefits. Claimants and employers would be allowed to direct the Department on how that should be done in the rulemaking process. **CHAIR SQUIRES** asked if this bill solves the problem that happened with the Intermountain closure in Missoula in deciding what to do with severance pay and the pay period. **Mr. Hunter** said yes.

REP. WHALEN asked **Mr. Hunter** what his understanding was of the change in the law that affected benefit payments to aliens in Section 18. **Mr. Hunter** said the federal law mandates that benefits be paid to aliens only under certain, unique conditions. They have to reside in this country under the Color of Law and have their green card. There are other strict provisions to paying benefits to aliens. The law was changed with an act that required employers to request information on alien status. Language was provided to the Department in 1987 to be inserted into the Code to make sure there was conformity. Two years later the Department was notified that the language was incorrect. This is the corrected version. No changes result from this language.

Closing by Sponsor:

REP. BERGSAGEL closed the hearing on HB 726.

HEARING ON HB 807

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, House District 88, Billings, presented amendments. **EXHIBIT 17.** The intent of the bill was to make the provisions and exemptions under Workers' Compensation the same as they are under Unemployment Insurance (UI), so they would be equal. If a person was exempt or included in Workers' Compensation, the person would be the same under UI. He asked that a subcommittee be appointed to work with the proponents and opponents. There was problem as a result of paper carriers being included in this situation. They were included under one side and not under the other.

Proponents' Testimony:

REP. DRISCOLL said that Ms. McClure drafted the bill exactly as he asked, and it is a mess. It can be fixed. The problem was not just with news boys but cosmetologists, travel in construction, and other issues. People have come before the Legislature and received an exemption to Workers' Compensation and forgot to get on the UI list, so then the state auditors audit the employer and say this person was an independent contractor and a Workers' Compensation premium isn't owed. Then the UI auditor says the person is not an independent contractor and the employer owes a UI premium. The intent of the bill is to clean up the law. He had Ms. McClure draft the bill in which agriculture, college students, and all elected officials would be exempted from Workers' Compensation; that is not the intent.

Mike Voeller, Lee Enterprises, said the amendment regarding Page 2, Subsection (g) was to have been in the bill but was inadvertently omitted. The other amendments accomplish the intent that if Workers' Compensation administratively recognizes a person as an exempt employee, UI will and vice versa. Sections

EXECUTIVE ACTION ON HB 726

Motion: **REP. DRISCOLL MOVED HB 726 DO PASS.**

Motion: **REP. DRISCOLL** moved to adopt amendment No. 6. **EXHIBIT 18**

Discussion:

REP. DRISCOLL said the amendment would strike Sections 19 and 20, which pertain to extended benefits if they are ever triggered. The Sections cut back benefits for people who have been out of work the longest. A reduced benefit would be received after the person has been out of work a longer time. The Division wants to save money, but it shouldn't be saving money on these people.

REP. JOHNSON asked **REP. DRISCOLL** to explain further. **REP. DRISCOLL** said the only way to receive extended federal benefits is under certain conditions of the rate of unemployment. There is a formula in the law. If a person has drawn out all of his state UI benefits and that state is eligible for extended benefits, the federal government will trigger in a federal extension. Part of it is paid by the state and part by the federal government. Under Sections 19 and 20 benefits could be lowered if the Federal Deficit Reduction Act requires it, and the federal contribution would be reduced. If Montana went to extended benefits because of the work situation, and the Federal Emergency Deficit Control Act said there would be, for example, a 10 percent cut, the benefits would be reduced 10 percent after the person has been out of work for 26 weeks already. It is not the right place to save money. **REP. JOHNSON** asked if the 10 percent is taken off by the federal government, then does the state have to cover that 10 percent. **REP. DRISCOLL** said yes, if the amendments are accepted. The State Fund would pay it. Under the present law, the state pays half and federal government pays half. If the language is left in the bill and the Federal Emergency Deficit Control Act requires a cut, the laid-off worker would receive a reduced amount. With the amendments, the laid-off worker would still receive the same amount, the federal government would pay a lesser amount, and the state's share would be higher because it would pick the percentage that is called for. Under the present law if there is no Federal Emergency Deficit Control Act percentage triggered, each would pay half.

Vote: **AMENDMENT NO. 6.** Motion carried 17 - 1, with REP. BENEDICT voting no.

Motion: **REP. DRISCOLL** moved to adopt amendment No. 11.

Discussion:

REP. JOHNSON asked **REP. DRISCOLL** to explain the amendment. **REP. DRISCOLL** said the amendment strikes Section 33. The present law says a person is disqualified for unemployment if he is fired with good cause. The amendment states a person is disqualified

for unemployment if fired or suspended. Presently, if a person is suspended from employment, he can draw unemployment after he has put in a waiting week. **REP. JOHNSON** asked if it was due to misconduct whether it was a discharge or a suspension. **REP. DRISCOLL** said yes; misconduct charged by the company.

REP. WHALEN said the provision wasn't needed. If there is a suspension, that implies the employee will be back to work later. The conflict between the employer and employee would be resolved, and the employee should be paid if the employer isn't paying him.

Vote: **AMENDMENT NO. 11.** Motion carried 14 to 4 with Reps. Johnson, Benedict, Lee, and Thomas voting no.

Motion: **REP. DRISCOLL** moved to amend Section 29 and 30.

Discussion:

REP. DRISCOLL said on Page 53, Section 29, Line 10, the penalty of 33 percent would be changed to two points over prime which was the same language used in HB 336. The same language should be inserted in Section 30, Page 54, Line 20. It is what the worker would receive if he is shorted on his wages, and the bills should be consistent.

REP. BENEDICT asked if previously there was a 5 percent penalty per day for 20 days on the employer. **REP. DRISCOLL** said the language was MAY assess no more than 100 percent and no less than 2 points over prime. **REP. BENEDICT** suggested doing the same for this bill. **REP. DRISCOLL** consented to his suggestion.

Motion: **REP. FAGG** made a substitute motion to incorporate Rep. Benedict's amendment into Rep. Driscoll's amendments, **AMENDMENT NOS. 9 AND 10.**

Ms. McClure asked for clarification. **REP. DRISCOLL** said it will read "the Department may assess a penalty equivalent to" and then insert the language used in HB 336.

Vote: **AMENDMENT NOS. 9 AND 10.** Motion carried unanimously.

REP. DRISCOLL asked **Ms. McClure** if this bill needed to be coordinated with HB 385. The language is similar on Page 53, Lines 17 through 25. **Ms. McClure** said she would check with the language of HB 385 and Chuck Hunter. If the language needed coordinating, she would do so. **Mr. Hunter** said language is needed to eliminate the retroactive application of the penalty.

Motion/Vote: **REP. DRISCOLL** moved that the amendments be drafted by Ms. McClure. Motion carried unanimously.

Motion/Vote: **REP. JOHNSON** moved to adopt amendment Nos. 4,5, and 7 (Chuck Hunter's amendments). Motion carried unanimously.

Motion/Vote: REP. JOHNSON MADE A SUBSTITUTE MOTION THAT HB 726 DO PASS AS AMENDED. EXHIBIT 18. Motion carried unanimously.

EXECUTIVE ACTION ON HB 846

Motion: REP. O'KEEFE MOVED HB 846 DO PASS.

Motion: REP. WHALEN moved to amend HB 846. **EXHIBIT 19**

Discussion:

REP. WHALEN said the information would be released to the public the same time it is released to everyone else, so on Page 4, Line 5, "when" would make more sense instead of "after" and likewise on Page 7, Line 6. With the word "after," it would be open ended and could be anytime. **REP. HANSON** said he disagreed with the term "when." The information would be considered and evaluated, possibly other organizations would get their data, and eventually a decision would be made. The information should be available at that time. Should it be opened to the public at the same time? **REP. O'KEEFE** said the intent of the bill does require the word "when." He worked with the Auditor's office and Tom Gomez in drafting the bill under Rep. Menahan's bill draft request. The intent is for the information to be public knowledge when the proposals are open and not after they have gone through the process of selecting a bidder and awarding a contract.

Vote: Motion to amend carried 13 to 5 with Reps. Johnson, Hanson, Lee, Benedict, and Thomas voting no.

Motion/Vote: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 846 DO PASS AS AMENDED. Motion carried 13 to 5 with Reps. Johnson, Hanson, Lee, Benedict, and Thomas voting no.

EXECUTIVE ACTION ON HB 857

Motion: REP. O'KEEFE MOVED HB 857 DO PASS.

Motion: REP. WHALEN moved to amend HB 857. **EXHIBIT 20**

Discussion:

REP. WHALEN said the quality of work issue should be addressed in the new Section 3, Subsection 7. **REP. O'KEEFE** said he didn't have a problem with inserting the specific wording.

Vote: Motion to amend carried unanimously.

Motion: REP. BENEDICT moved to amend HB 857.

EXHIBIT 15
DATE 2/19/91
HB 726

HB 726 - UI General Revision

Amendments:

Page 10, line 3 (39-51-202) - The agricultural and domestic coverage should also be specified in this subsection, and should read:

"(5)(7) any employing unit which, having become an employer under subsection (1), (2), (3), (4), (5), or (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or"

Page 27, line 7 (39-51-1105) should be corrected for consistency and technical accuracy as follows:

taxes, penalties, and interest thereafter accruing."

Page 39, line 9 (39-51-1121) - cutoff date should be changed from November 30 to October 31. This change will eliminate the $4.3 million fiscal impact to the trust fund as shown on the fiscal note making it revenue neutral, and will still allow us to determine employer contribution rates by the first week of January. Change as follows:

"(2) "Cutoff date" means December 31 October 31

EXHIBIT 16
DATE 2/19/91
HB 726

GENERAL REVISIONS BILL
UNEMPLOYMENT INSURANCE PROGRAM

Effects of the Bill:

- Combines the definitions of "contributions" and "assessments" under the single term "taxes".
- Places the exclusions for agricultural and domestic employment in the same section with all other exclusions, rather than a separate section.
- Provides clear authority to the Department to allocate certain payments (such as severance pay or termination pay) to weeks other than the week they were paid.
- Removes the requirement of filing with the Secretary of State a listing of personal property in order to perfect the lien, since the Secretary of State has no ability or procedure for accepting such a filing.
- Adopts federally mandated language regarding payment of benefits to aliens, and regarding approved training under the Job Training Partnership Act.
- Provides that the state may reduce its matching share of extended benefit payments in the same percentage that the federal share is reduced due to the Gramm Rudman Hollings Act.
- Deletes the term "unrated employer" from the statute since changes made during the past legislative session made the term obsolete.
- Clarifies that non-profit and governmental employers who are providing employment to a person also drawing partial benefits may not be charged for benefits for that individual, so long as there is no reduction to his hours or wages.
- Changes the procedure (date) for determining the overall tax rate so that employers may be notified sooner.
- Changes the penalty for obtaining benefits fraudulently from 18% percent per annum, computed from the time the fraud occurred, to a flat 33% of the benefits fraudulently obtained. This penalty would be imposed at the time of the decision finding fraud.
- Allows the Department to disqualify an individual who has been suspended for misconduct. Current law allows this action only for termination for misconduct.

EXHIBIT 18
DATE 2/19/91
HB 726

Amendments to House Bill No. 726
First Reading Copy

For the House Committee on Labor and Employment Relations

Prepared by Eddye McClure
February 22, 1991

1. Title, page 1, lines 14 and 15.
Strike: "TO REVISE" on line 14 through "BENEFITS;" on line 15

2. Title, page 1, line 24 through page 2, line 1.
Strike: "TO" on line 24 through "MISCONDUCT;" on line 1

3. Title, page 2, line 8.
Following: "39-51-2302,"
Strike: "39-51-2303, 39-51-2509, 39-51-2510,"

4. Page 10, line 3.
Following: "~~(2), (3)~~"
Insert: "(2), (3),"

5. Page 27, line 7.
Following: "taxes"
Insert: "penalties, and interest"

6. Page 36, line 9 through page 37, line 24.
Strike: sections 19 and 20 in their entirety
Renumber: subsequent sections

7. Page 39, line 9.
Following: "~~December 31~~"
Strike: "November 30"
Insert: "October 31"

8. Page 53, line 6.
Following: "him"
Insert: ","

9. Page 53, line 10.
Following: "~~due.~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"

10. Page 54, line 19.
Following: "received"
Insert: ","
Following: "~~year,~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"

Ex. 10
2-19-91
HB 726

11. Page 56, line 20 through page 57, line 10.
Strike: section 33 in its entirety
Renumber: subsequent sections

Jennifer

HOUSE STANDING COMMITTEE REPORT

February 22, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 726 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, page 1, lines 14 and 15.
Strike: "TO REVISE" on line 14 through "BENEFITS;" on line 15

2. Title, page 1, line 24 through page 2, line 1.
Strike: "TO" on line 24 through "MISCONDUCT;" on line 1

3. Title, page 2, line 8.
Following: "39-51-2302,"
Strike: "39-51-2303, 39-51-2509, 39-51-2510,"

4. Page 10, line 3.
Following: "~~(2), (3)~~"
Insert: "(2), (3),"

5. Page 27, line 7.
Following: "taxes"
Insert: ",penalties, and interest"

6. Page 36, line 9 through page 37, line 24.
Strike: sections 19 and 20 in their entirety
Renumber: subsequent sections

7. Page 39, line 9.
Following: "~~December 31~~"
Strike: "November 30"
Insert: "October 31"

8. Page 53, line 6.
Following: "him"
Insert: ","

9. Page 53, line 10.
Following: "~~due.~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"

10. Page 54, line 19.
Following: "received"
Insert: ","
Following: "~~year,~~"
Insert: "the department may assess"
Following: "penalty"
Strike: "equivalent to 33%"
Insert: "not to exceed 100%"

11. Page 56, line 20 through page 57, line 10.
Strike: section 33 in its entirety
Renumber: subsequent sections

CHAIRMAN--RICHARD MANNING
NORMAL SCHEDULE==> SITE: RM 413/415 DAYS: T,TH,S TIME: 3:00 P.M.

SECRETARY-LINDA CASEY

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0663	2/27	3/05		CONCUR		3/13
DOWELL, TIM			EXPAND APPLICATION OF PROVISIONS OF THE UNIFORM ARBITRATION ACT			
HB0712	2/27	3/12		CONCUR AS AMENDED		3/14
SQUIRES, CAROLYN			MANDATE EMPLOYER TO PURCHASE EMPLOYEE'S SAFETY EQUIPMENT EXCEPT FOOTWARE			
HB0726	2/26	3/19		CONCUR		3/20
BERGSAGEL, ERNEST			GENERALLY REVISE THE UNEMPLOYMENT INSURANCE LAWS			
HB0729	2/26	3/19		CONCUR		3/20
RUSSELL, ANGELA			DELETE DISQUALIFICATION REQUIRING GOOD CAUSE ATTRIBUTABLE TO EMPLOYMENT			
HB0730	2/27	3/26		CONCUR AS AMENDED		4/02
BROWN, DAVE			REVISE PSC AUTHORITY RE RAILROAD SHIPPING AND PASSENGER FACILITIES			
HB0803	3/28	4/09		CONCUR AS AMENDED		4/10
MENAHAN, RED			PROTECT EMPLOYEES AND COMMUNITIES FROM EFFECTS OF CLOSURES AND LAYOFFS			
HB0804	3/28	4/09		CONCUR AS AMENDED		4/10
MENAHAN, RED			PROVIDE BENEFITS FOR EMPLOYEES TERMINATED THROUGH A REDUCTION IN FORCE			
HB0807	2/27	3/26		CONCUR AS AMENDED		4/01
JOHNSON, ROYAL			MAKE UNEMPLOYMENT AND WORKERS' COMPENSATION EXCLUSION LISTS CONSISTENT			
HB0812	2/26	3/14		CONCUR		3/15
WANZENRIED, DAVID			WORKERS' COMP & UNEMPLOYMENT COMP EXCLUSIONS FROM DEFINITION OF WAGES			
HB0836	2/27	4/02		CONCUR AS AMENDED		4/03
DRISCOLL, JERRY			REVISE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS			
HB0837	2/27	3/26		CONCUR AS AMENDED		4/01
DRISCOLL, JERRY			REVISE WORK COMP LAW			

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 19, 1991, at 3:25 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 600

Presentation and Opening Statement by Sponsor:

Representative Jerry Driscoll told the Committee House Bill 600 changes the duration of weeks schedule in the unemployment insurance law. He explained under the present schedule in order to qualify for the maximum of 26 weeks an individual must work in every quarter of the year because the ratio is 3.25 times in the base year of the amount made in the highest quarter. House Bill 600 would change the ratio to 2.95 and an individual would not have to work in every quarter to qualify for 26 weeks. He commented the average duration of weeks worked is 14. He pointed out the Fiscal Note indicates during the worst economic times 15 weeks was the average. Representative Driscoll told the Committee people working for a quarter in seasonal work or in a plant which is shut down do not qualify for 26 weeks. In construction, logging or employment where the employer asks the employee to work 40 hours every week or asks them to work overtime, and they made $6000 in the high quarter; in order to qualify for the 26 weeks an individual would have to make

Senator Towe asked if Mr. Judge believed there is some way House Bill 141 is not direct conflict with federal law. Mr. Judge told the Committee he believes it would be in direct conflict with federal law but he "does not believe the sanction would be imposed that fast".

Senator Towe asked Representative Harrington about the holiday and vacation recess pay. He asked if an hourly employee is off for two week during spring vacation would they receive unemployment. Representative Harrington explained under current law there is a one week waiting period. If off for two weeks they would receive one week.

Senator Keating asked Mr. Hunter if there are requirements for drawing unemployment in which the applicant must make themselves available for work. Mr. Hunter explained individuals are required to be actively searching for work during unemployment, but the work has to suitable and of a nature the claimant is able to perform in his customary occupation. The department does, after a number of week of unemployment, expand what is suitable over time. In the logging industry, many people who are sawyers are not working during those months in which they are off and do draw benefits.

Closing by Sponsor:

Representative Harrington told the Committee many university units have contracted services. These people do work on a part-time basis. They are entitled now to receive unemployment compensation. There are bus drivers on contracted services. They are also eligible for unemployment compensation. He commented many area are covered. He told the Committee the many of the food services for the university is covered. He stated teachers make much more than the individuals in support services. But if a teacher is notified they will not be rehired they are eligible to collect unemployment. He stated this is an inequity. He told the Committee possibly a sunset could be put on House Bill 141 to give these people a period of time until the next session. He did not feel any other amendments would help these workers.

HEARING ON HOUSE BILL 726

Presentation and Opening Statement by Sponsor:

Representative Bergsagel told the Committee House Bill 726 is a request of the Unemployment Insurance Division of the Montana Department of Labor and Industry and was amended by the House Labor Committee. He explained HB 726 would clarify updates and improves the general provisions of the unemployment insurance program.

Proponents' Testimony:

Chuck Hunter of the Department of Labor and Industry explained House Bill 726 was considered a "customer service bill" by the department. He told the Committee through consideration of ideas from employers and claimants, this legislation was conceived to provide better service. He explained House Bill 726 would bring many definitions found throughout the MCA into one place. Procedures for filing leans have been defined. Obsolete terms have been deleted. The date for determining tax rates have been changed in order to provide employers with tax rates earlier. The penalties for obtaining benefits fraudulently have been changed to eliminate the retroactive imposition of penalty, and to eliminate complex calculations.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Aklestad asked why the language on Page 1, Line 25 and Page 2, Lines 1 and Lines 2 stricken.

Senator Towe explained this was because Section 33 was stricken.

Senator Aklestad asked Mr. Hunter if agriculture employment would fall under this act. Mr. Hunter stated that was correct. He explained the definition was not changing, it is being moved verbatim from the section dealing with agriculture employment.

Senator Towe asked Mr. Hunter where the lien provisions were. Mr. Hunter told the Committee in the 1989 session a change was proposed in which the department could file liens on personal property, as well as real property. During the testimony individuals representing title companies presented opposition. They asked for provision to identify the piece of property being attached. They suggested filing a list with the Secretary of State. Over the past two years the department has attempted to work with the legislation. He explained the Secretary of State has no ability, nor willingness to accept those documents from the department.

Closing by Sponsor:

Representative Bergsagel closed on House Bill 726.

EXECUTIVE ACTION ON HOUSE BILL 726

Motion:

Senator Pipinich moved House Bill 726 BE CONCURRED IN.

Recommendation and Vote:

Motion to BE CONCURRED IN CARRIED UNANIMOUSLY. Senator Blaylock will carry House Bill 726 to the Senate floor.

HEARING ON HOUSE BILL 729

Presentation and Opening Statement by Sponsor:

Representative Angela Russell told the Committee House Bill 729 is an act to delete language requiring an employees disqualification from receiving unemployment benefits for good cause must be attributable to employment. She explained prior to the 1985 legislative session the Montana unemployment insurance tax fund was experiencing a large deficit and was forced to borrow from the federal in order to meet obligations to laid off workers. Montana was not alone in the situation. Several states experienced deficits. The 1985 Legislature responded to the problem by enacting the "so called compromise" House Bill 284. Since 1985 the Montana unemployment insurance trust fund has been able to pay off the federal debt and employers have experienced at least four reductions in the unemployment insurance tax rates, dropping from Schedule 10 to Schedule 1. She explained what happened, happened since 1985, is any return of benefits to those unemployed workers, (part of the "compromise" to save the fund). House Bill 729 is intended to restore one portion of those benefits to workers and would grant the DOLI the authority to review voluntary termination of workers. If workers have chose "for good cause", to quit their jobs which is not attributable to their employment should be found eligible to receive unemployment benefits. If a worker quits the job due to a job-related factor, such as hazardous working conditions, exposure to dangerous chemicals, a significant change in work hours, job location or wages and benefits, the DOLI can find them eligible for unemployment insurance benefits. If a worker quit the job due to a non-job related factor, such as to follow a spouse to another location, personal health, sickness or death of a relative, or to take care of a dependent child they are automatically disqualified from receiving benefits. She told the Committee HB 729 would grant the department the discretion to determine if these were justifiable reasons for voluntarily quitting a job with each case individually reviewed and a determination made on the circumstances. She explained in many cases the workers being denied benefits are women.

Proponents' Testimony:

Representative Bob Gervais spoke in support of House Bill 729.

Don Judge of the Montana State AFL-CIO spoke in support of House Bill 729 from prepared testimony (Exhibit #4).

Gene Fenderson, representing the Montana State Building and

DATE 3/19/91

COMMITTEE ON Senate Labor

HB-141 – 600 – 726 – 729

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Chuck Hunter	DOLI	141		X
Lucina Apsuka	A.T.U. #381	141	X	
Linda Gordon	A.T.U. #381	141	X	
MARK LANGDORF	AFSCME	729 141	X	
DARRELL HOLDEN	MT. ST. AFL-CIO	141 600 729 726	X	
BUCK BOLES	MT CHAMBER	HB 600 HB 729		X
C. HUNTER	DOLI	726	X	
[illegible] BROOKS	MT Retail Association	600 729		X
CARS ERICSON	MT ST CARPENTERS	729 600	X	
[illegible] SMITH	Uniform Services Commission	HB 141 600 729		X
Terry Minow	MFT / MFSE	141	X	
Don Judge	MT STATE AFL-CIO	HB 141 HB 729	X	
Jim STUCKY	IOUE #400	HB 600 HB 729	X	
E. Fenderson	MT St Bldg Trades	HB 141 729-600	X	
Bob DERVAIS	H.D. 9	141	X	
BOB DERVAIS	H.D. 9	729	X	
Mike Micone	DLI	HB 141 729 HB 600		X
Don Judge	MT STATE AFL-CIO	HB 141 HB 729	X	
Phil Campbell	MEA	HB 141	X	
Bob Heiser	UFCW	HB 600 141 729	X	
A Russell	HD 99	729	X	

DATE 3/19/91 (cont'd)

COMMITTEE ON Senate Labor

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
W. James Kembel	Public Safety Div / DOC	SB 466	Information	
Ron Stoltz	Construction	HB 342		✓

(Please leave prepared statement with Secretary)

HOUSE BILL NO. 726

INTRODUCED BY BERGSAGEL, LYNCH, THOMAS, DRISCOLL, O'KEEFE, BLAYLOCK, WILLIAMS, SQUIRES, NATHE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE UNEMPLOYMENT INSURANCE LAWS; TO DEFINE "TAXES"; TO CLARIFY THE TERM "WAGES"; TO REVISE THE EXCLUSIONS FROM THE DEFINITION OF EMPLOYMENT RELATING TO AGRICULTURAL LABOR AND DOMESTIC SERVICES; TO ALLOCATE WAGES TO PERIODS OF TIME FOR THE PURPOSE OF DETERMINING ELIGIBILITY AND BENEFITS; TO CLARIFY THE AUTHORITY OF THE DEPARTMENT OF LABOR AND INDUSTRY TO AUDIT EMPLOYER RECORDS; TO CLARIFY EMPLOYER LIABILITY FOR TAXES, PENALTIES, AND INTEREST; TO CLARIFY PAYMENT OF BENEFITS TO ALIENS; ~~TO REVISE PAYMENT OF EXTENDED BENEFITS;~~ TO REVISE APPROVED TRAINING UNDER FEDERAL PROGRAMS THAT IS ALLOWED WHILE A PERSON IS RECEIVING BENEFITS; TO REVISE THE CHARGING AND CLASSIFICATION OF EMPLOYERS; TO PLACE A JUDGMENT LIEN ON THE PERSONAL PROPERTY OF EMPLOYERS WHO OWE UNPAID TAXES, PENALTIES, AND INTEREST; TO PROVIDE FOR A PENALTY FOR MAKING FALSE STATEMENTS IN ORDER TO OBTAIN OR INCREASE BENEFITS; TO REVISE REQUALIFYING WAGES THAT MUST BE EARNED AS A CONDITION OF RECEIVING BENEFITS IN A SECOND BENEFIT YEAR; TO REVISE DISQUALIFICATION FOR BENEFITS FOR LEAVING WORK WITHOUT GOOD CAUSE; ~~TO DISQUALIFY AN INDIVIDUAL FOR UNEMPLOYMENT INSURANCE BENEFITS FOR SUSPENSION FROM WORK DUE TO MISCONDUCT;~~ TO REPEAL DISQUALIFICATION FOR BENEFITS BECAUSE OF SELF-EMPLOYMENT; AMENDING SECTIONS 39-51-201, 39-51-202, 39-51-203, 39-51-204, 39-51-206, 39-51-602, 39-51-603, 39-51-1101, 39-51-1104, 39-51-1105, 39-51-1110, 39-51-1121, 39-51-1125, 39-51-1212, 39-51-1213, 39-51-1214, 39-51-1217, 39-51-1218, 39-51-1301, 39-51-1302, 39-51-1303, 39-51-1304, 39-51-1305, 39-51-1306, 39-51-2107, 39-51-2110, 39-51-2302, ~~39-51-2303, 39-51-2509, 39-51-2510,~~ 39-51-2602, 39-51-3201, AND 39-51-3202, MCA; REPEALING SECTION 39-51-2308, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"**39-51-201. General definitions.** As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base

REFERENCE BILL

period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided

for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under ~~subsections (8) and (9) of 39-51-203~~ 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the

work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been

licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state

are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

~~(17)~~(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

~~(18)~~(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of

employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability~~,--but-in-the-case-of payments--made--by-an-employer-directly-to-an-employee,-only those-payments-made~~ under a workers' compensation law ~~are excluded-from-"wages"~~;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

~~(19)~~(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(20)~~(21) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-202, MCA, is amended to read:

"**39-51-202. Employer defined.** "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs

10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

~~(2)~~(4) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

~~(3)~~(5) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

~~(4)~~(6) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the

Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

~~(5)~~(7) any employing unit which, having become an employer under subsection (1), ~~(2),~~ ~~(3)~~ (2), (3), (4), (5), or ~~(4)~~ (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

~~(6)~~(8) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter."

Section 3. Section 39-51-203, MCA, is amended to read:

"**39-51-203. Employment defined.** (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is perrormed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is

considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of

the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

~~(8)--Agricultural--labor--exempted--under--39-51-204--is considered--employment--whenever--the--employing--unit--pays $20,000-or-more-in-cash-to-workers-for-agricultural-labor-in any-quarter-in-the-current-or--preceding--calendar--year--or employs--10-or-more-workers-in-agricultural-labor-on-20-days in-20--different--weeks--during--the--current--or--preceding calendar--year.--If-an-employer,-including-but-not-limited-to an-employing-unit-providing-outfitter-and-guide-services,-is otherwise-subject--to--this--chapter--and--has--agricultural employment,-all-employees-engaged-in-agricultural-labor-must be---excluded--from--coverage--under--this--chapter--if--the employer:~~

~~(a)--in-any-quarter-or--calendar--year,--as--applicable, does--not--meet-either-of-the-tests-relating-to-the-monetary amount-or-number-of--employees--and--days--worked,--for--the subject-wages-attributable-to-agricultural-labor,-and~~

~~(b)--keeps-separate-books-and-records-to-account-for-the employment-of-persons-in-agricultural-labor.~~

~~(9)--Domestic--service-exempted-under-39-51-204(1)(b)-is considered--employment--whenever--the--employing--unit--pays $1,000-or-more-in-cash-for-domestic-service-in--any--quarter during--the--current--or--preceding--calendar--year.--If--an~~

~~employer--is--otherwise--subject--to--this--chapter--and-has domestic--service--employment,--all--employees--engaged---in domestic--service--must-be-excluded-from-coverage-under-this chapter-if-the-employer:~~

~~(a)--does-not-meet-the--monetary--payment--test--in--any quarter--or--calendar--year,--as-applicable,-for-the-subject wages-attributable-to-domestic-service;-and~~

~~(b)--keeps-separate-books-and-records-to-account-for-the employment-of-persons-in-domestic-service;"~~

Section 4. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in ~~39-51-203(8),~~ 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor;

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority,

except as provided in ~~39-51-203(9),~~ 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service;

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is

excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a

student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is

licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work

performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church

or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution."

Section 5. Section 39-51-206, MCA, is amended to read:

"39-51-206. Agricultural labor -- who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform

service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person ~~within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9)~~ for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor

performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person."

Section 6. Section 39-51-602, MCA, is amended to read:

"**39-51-602. Method to be used by department in keeping wage records.** Wage records kept by the department for the purposes of this chapter ~~shall~~ must be kept on the basis of wages paid~~.~~, except that for the purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, must be assigned to periods of time as determined in accordance with rules adopted by the department."

Section 7. Section 39-51-603, MCA, is amended to read:

"**39-51-603. Employing unit to keep records and make reports.** (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and audit and shall be subject to being copied by

the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both."

Section 8. Section 39-51-1101, MCA, is amended to read:

"**39-51-1101. Commencement and termination of coverage under chapter.** (1) Any employing unit which is or becomes an

employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not equal or exceed ~~$1,000~~ the amount of wages required under 39-51-202 to be considered an employer subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in ~~subsection (2) or (3) of~~ 39-51-202(4) or (5) shall be treated as a single employing unit."

Section 9. Section 39-51-1104, MCA, is amended to read:

"**39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to ~~contributions~~ taxes, penalties, and interest owed by subcontractor.** (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the

provisions of this chapter shall withhold sufficient money on the contract to guarantee that all ~~contributions~~ taxes, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all ~~contributions~~ taxes, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor."

Section 10. Section 39-51-1105, MCA, is amended to read:

"**39-51-1105. Liability of corporate officers for ~~contributions~~ taxes, penalties, and interest owed by corporation.** When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president,

secretary, and treasurer jointly and severally liable for any ~~contributions~~ taxes, penalties, and interest due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the ~~contributions~~ taxes, PENALTIES, AND INTEREST thereafter accruing."

Section 11. Section 39-51-1110, MCA, is amended to read:

"**39-51-1110. Refunds to employers.** (1) If not later than 3 years after the date on which any ~~contributions~~ taxes or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such ~~contributions~~ taxes or interest thereon shall make application for an adjustment thereof in connection with subsequent ~~contribution~~ tax payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such ~~contributions~~ taxes or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent ~~contribution~~ tax payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and

within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid ~~contributions~~ taxes to this state under this chapter when such ~~contributions~~ taxes should have been paid to another state under a similar act of such other state, transfer of such ~~contributions~~ taxes to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all ~~contributions~~ taxes required under this chapter from employers for that year."

Section 12. Section 39-51-1301, MCA is amended to read:

"**39-51-1301. (Effective July 1, 1991) Penalty and interest on past-due ~~contributions~~ taxes.** (1) ~~Contributions~~ Taxes unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the ~~contribution~~ tax due, whichever is greater. If the ~~contributions~~ taxes are not paid by the end of the month

following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the ~~contributions~~ taxes due, whichever is greater. All past-due ~~contributions~~ taxes shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay ~~contributions~~ taxes on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay ~~contributions~~ taxes on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due ~~contributions~~ taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose."

Section 13. Section 39-51-1302, MCA, is amended to read:

"39-51-1302. Summary or jeopardy assessment of unpaid

~~contributions~~ taxes. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of ~~contributions~~ taxes due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and ~~contributions~~ taxes due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified ~~or--registered~~ mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed

by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final."

Section 14. Section 39-51-1303, MCA, is amended to read:

"**39-51-1303. Collection of unpaid ~~contributions~~ taxes by civil action.** (1) If, after due notice, any employer defaults in any payment of ~~contributions~~ taxes, penalties, or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of ~~contributions~~ taxes due must be brought within 5 years after the due date of such ~~contributions~~ taxes or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both."

Section 15. Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid ~~contributions and assessments~~ taxes -- levy and execution.** (1) Unpaid ~~contributions and assessments under 39-51-404(4)~~ taxes, including penalties and interest assessed thereon, have the effect of a judgment against the employer, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. ~~From the time the judgment is filed with the secretary of state or a registrar of personal property specifically describing the personal property, it becomes a lien upon personal property of the employer.~~ After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all ~~contributions,--assessments~~ taxes, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent ~~contributions,-assessments~~ taxes, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 16. Section 39-51-1305, is amended to read:

"**39-51-1305. Priority of payment of ~~contributions~~ taxes due under legal dissolutions or distributions.** In the event

of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, ~~contributions~~ taxes then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding."

Section 17. Section 39-51-1306, MCA, is amended to read:

"**39-51-1306. Reciprocity with other states for collection of unpaid ~~contributions~~ taxes.** (1) The courts of this state shall recognize and enforce liabilities for unemployment ~~contributions~~ taxes and any other special assessments imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment ~~contributions~~ taxes, penalties, and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such ~~contributions~~ taxes and any other special assessments and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys

institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent ~~contributions~~ taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance ~~contributions~~ taxes and other special assessments, penalties, and interest shall be conclusive evidence of such authority."

Section 18. Section 39-51-2110, MCA, is amended to read:

"**39-51-2110. Payment of benefits to aliens.** (1) ~~Effective--January--1,--1978,-benefits~~ Benefits shall not be ~~paid~~ payable on the basis of services performed by an alien unless ~~such~~ the alien is an individual who ~~has-been~~ was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or ~~otherwise-is~~ was permanently residing in the United States under color of law, at the time the services were performed, including an alien who ~~is~~ was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence."

~~Section-19.--Section--39-51-2509,--MCA,--is--amended--to read:~~

~~"39-51-2509.--Weekly--extended--benefit--amount.~~ ~~(1)~~ ~~The weekly-extended-benefit-amount-payable-to-an-individual--for a-week-of-total-unemployment-in-his-eligibility-period-shall be--an--amount-equal-to-the-weekly-benefit-amount,-except-as provided-in-subsection-(2).~~

~~(2)--For-any-week--during--a--period--in--which--federal payments---to---this---state---under---section--204--of--the Federal-State-Extended-Unemployment-Compensation-Act-of-1970 are-reduced-under-an-order-issued-under-section-252--of--the Balanced--Budget--and-Emergency-Deficit-Control-Act-of-1985, the-weekly-extended-benefit-amount-payable-to-an--individual for--a--week-of-total-unemployment-in-his-eligibility-period must-be-reduced-by-a-percentage-equivalent-to-the-percentage of-the-reduction-in-the-federal-payment.-The-reduced--weekly~~

~~extended--benefit--amount,-if-not-a-full-dollar-amount,-must be-rounded-to-the-nearest-lower-full-dollar-amount~~ payable to-him-during-his-applicable-benefit-year."

~~Section-20.--Section--39-51-2510,--MCA,--is--amended--to read:~~

~~"39-51-2510.--Total--extended--benefit--amount.--The (1) Except-as-provided-in-subsection--(2),--the~~ total--extended benefit--amount--payable--to--any--eligible--individual-with respect-to-his-applicable-benefit-year-shall-be-the-least-of the-following-amounts:

~~(1)(a)~~--50%-of-the--total--amount--of--regular--benefits which--were--payable--to--him--under--this--chapter--in--his applicable-benefit-year;

~~(2)(b)~~--13--times--his--weekly--benefit-amount-which-was payable-to-him-under--this--chapter--for--a--week--of--total unemployment-in-the-applicable-benefit-year.

~~(2)--During-any-fiscal-year-in-which-federal-payments-to this--state--under-section-204-of-the-Federal-State-Extended Unemployment-Compensation-Act-of-1970-are-reduced--under--an order--issued--under--section-252-of-the-Balanced-Budget-and Emergency-Deficit-Control-Act-of-1985,--the--total--extended benefit--amount-payable-to-an-individual-with-respect-to-his applicable-benefit-year-must-be-reduced-by-an--amount--equal to--the--aggregate-of-the-reductions-under-39-51-2509-in-the weekly-amounts-paid-to-the-individual."~~

Section 19. Section 39-51-2602, MCA, is amended to read:

"**39-51-2602. Approved ~~trade-readjustment~~ training** under federal programs. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because ~~he is~~ of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974, or under Title III of the federal Job Training Partnership Act;

(b) ~~in-which-he-is~~ because of participation in ~~such~~ approved training described in subsection (1)(a) by reason of leaving work to enter ~~such~~ the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal

Trade Act of 1974 and the federal Job Training Partnership Act."

Section 20. Section 39-51-1121, MCA, is amended to read:

"**39-51-1121. Definitions.** As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means ~~December 31~~ ~~November 30~~ OCTOBER 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

~~(4) "Department" means the department of labor and industry.~~

~~(5)~~(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

~~(a) filed all contribution reports prescribed by the department;~~

~~(b) paid all contributions and all assessments under~~

~~39-51-404(4) and penalties and interest thereon;~~

~~(c)~~(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

~~(d)~~(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

~~(6)~~(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

~~(7)~~(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

~~(9)--"Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer.~~"

Section 21. Section 39-51-1125, MCA, is amended to read:

"**39-51-1125. Computation of payments in lieu of contributions.** (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such

employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages."

Section 22. Section 39-51-1212, MCA, is amended to read:

"**39-51-1212. Experience rating for governmental entities.** (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's

account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's

base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages."

Section 23. Section 39-51-1213, MCA, is amended to read:

"**39-51-1213. Classification of employers for experience rating purposes.** (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981,

divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the

taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance, but such change does not affect the position or rate classification of any

other employer listed on the schedules and does not affect the rate determination for previous years.

(6) ~~Deficit--employers~~ An employer who ~~have~~ has not filed all required payroll reports or paid all ~~contributions~~ taxes, penalties, and interest due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year for his classification as an eligible, deficit, or new employer."

Section 24. Section 39-51-1214, MCA, is amended to read:

"**39-51-1214. Benefit payments chargeable to employer experience rating accounts.** (1) Except for cost reimbursement, benefits paid shall be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(b) if paid in accordance with the extended benefit

program triggered by either national or state indicators; ~~or~~

(c) if the base period employer continues to provide employment with no reduction in hours or wages~~.~~; or

(d) if benefits are paid to claimants who are in training approved under 39-51-2307."

Section 25. Section 39-51-1217, MCA, is amended to read:

"**39-51-1217. Schedule of rates assigned based on trust fund reserve.** (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of ~~December 31~~ ~~November 30~~ OCTOBER 31 prior to the rate year to total wages in covered employment for the 12-month period ending June 30 prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible~~,--unrated,~~ and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as ~~unrated~~ a new employer must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding

the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may ~~an unrated~~ a new employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification."

Section 26. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES -- Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0

Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3

~~Contribution Rates Per Unrated Employers~~

~~2.0% 2.2% 2.4% 2.6%~~

Rate Class	Contribution Rates For Deficit Employers			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2
9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES -- Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
2.2	2.4	2.6	2.8	3.0	3.2

Contribution Rates For Eligible Employers

0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7
1.9	2.1	2.3	2.5	2.7	2.9
2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5

~~Contribution Rates For Unrated Employers~~

~~2.8%~~	~~3.0%~~	~~3.2%~~	~~3.4%~~	~~3.6%~~	~~3.8%~~

Contribution Rates For Deficit Employers

4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4"

Section 27. Section 39-51-3201, MCA, is amended to read:

"**39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- administrative penalty and remedy.** (1) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

~~(1)~~(a) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in

accordance with the severity of each case; and

~~(2)~~(b) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him, plus ~~interest at the rate of 10% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due.~~ THE DEPARTMENT MAY ASSESS a penalty ~~equivalent to 33%~~ NOT TO EXCEED 100% of the fraudulently obtained benefits, except that future benefits may not be used to offset the penalty due. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the

unemployment insurance trust fund at the end of each fiscal year."

Section 28. Section 39-51-3202, MCA, is amended to read:

"**39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits -- criminal penalty.** (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201~~(2)~~(1)(b).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus ~~10%--interest--a--year,~~ THE DEPARTMENT MAY ASSESS a penalty ~~equivalent--to--33%~~ NOT TO EXCEED 100% of the amount wrongfully received. ~~notwithstanding--the--provisions--of--25-9-205.~~ All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may

be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year."

Section 29. Section 39-51-2107, MCA, is amended to read:

"**39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year -- amount required.** An individual who received benefits during a benefit year must perform services for remuneration ~~after-the-beginning-of--that--year~~ following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. ~~The--service-may-be-in-either covered--or--noncovered---employment.~~ The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year."

Section 30. Section 39-51-2302, MCA, is amended to read:

"**39-51-2302. Disqualification for leaving work without good cause.** (1) An individual shall be disqualified for benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct ~~or-left-his-employment~~ upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment."

~~Section-33.--Section--39-51-2303,--MCA,--is--amended--to read:~~

~~"39-51-2303.--Disqualification----for----discharge~~ or suspension ~~due--to--misconduct.--An--individual--shall--be~~

~~disqualified--for--benefits--after---being---discharged~~ or ~~suspended:~~

~~(1)--for-misconduct-connected-with-the-individual's-work or---affecting---the---individual's---employment--until--the individual----has----performed----services,-----other----than self-employment,-for-which-remuneration-is-received-equal-to or-in-excess-of-eight-times-the-individual's-weekly--benefit amount--subsequent--to-the-week-in-which-the-act-causing-the disqualification-occurred;~~

~~(2)--for---gross---misconduct---connected----with----the individual's--work--or-committed-on-the-employer's-premises, as-determined-by-the-department,-for-a-period-of-52-weeks.~~"

NEW SECTION. **Section 31.** **Repealer.** Section 39-51-2308, MCA, is repealed.

NEW SECTION. **Section 32.** **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 33.** **Effective date.** [This act] is effective July 1, 1991.

-End-